

Town of Amherst  
Zoning Board of Appeals - Special Permit

*DECISION*

**Applicant:** Peter Sylvan

**Date Application filed with the Town Clerk:** February 22, 2005

**Nature of request:** Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to operate a small grocery store and café with seasonal outdoor dining and an off-premises beer and wine license for the store.

**Location of property:** 491 Pine Street, (Map 6A, Parcel 39, R-N Zone)

**Legal notice:** Published in the Daily Hampshire Gazette on February 23, 2005, and March 2, 2005, and sent to abutters on February 23, 2005.

**Board members:** Tom Simpson, Barbara Ford and Susan Pynchon

**Submissions:**

Prior to the public hearing the applicants submitted the following documents:

- A Management Plan for the Cushman Market and Café;
- A sample menu for the café;
- A preliminary plan entitled "Site Survey", undated;
- A plan entitled "Site Plan", dated February 12, 2005, showing the existing building, existing and proposed parking spaces, the proposed deck and patio, proposed stairs and handicap ramp, proposed location of trash receptacles, signs and lighting and relocated propane tank;
- Catalogue information on proposed exterior lighting;
- An interior floor plan entitled "First Floor Plan" and "Second Floor Plan", dated February 12, 2005;
- A photograph of the front of the existing building showing proposed signs, entitled "Proposed Signage";
- Photographs of the front of the existing building showing signs that existed there previously, entitled "Historic Precedent".

The Planning Department submitted Memorandum Re: ZBA FY2005-00020, which discussed zoning, previous permits, dimensional requirements, parking, landscape planting, lighting, historical issues, survey, signs, universal accessibility and Fire Department and DPW review.

The Planning Department also submitted a letter, dated March 8, 2005, received by email from Eileen Simonson, an abutter, expressing concerns about the application.

Prior to or during the continuation of the public hearing on April 14, 2005, the applicant submitted the following documents:

- A final survey plan entitled "Existing Conditions" prepared by Harold L. Eaton & Associates, Inc., dated March 9, 2005.
- Final revised Site Plan and Floor Plans dated April 12, 2005.
- A letter dated April 10, 2005, stating that Haim Shahar was no longer involved with the purchase of the property or with the Special Permit application.
- A final revised Management Plan including information about employee training regarding the sale of alcohol.
- A colored drawing of the main sign for over the front door.

**Site Visit:** March 8, 2005

Board members Tom Simpson, Barbara Ford and Susan Pynchon attended the site visit. They were met by the applicant's wife, Rebecca Schwartz. At the site visit the Board observed the following:

- The location of the property in a residential neighborhood in North Amherst, adjacent to the railroad tracks, and across the street from the Cushman Common;
- The existing, historical, wood frame building, formerly used as a general store and known as the "Cushman Store";
- The existing driveway which is shared with the neighboring house to the west, and also used as a parking area for this adjacent house;
- The existing parking areas for the "Cushman Store":
  - On the store property, both in front of the building and behind the building,
  - On town property, across the street;
- The neighboring house on the west side, with its outbuildings, including a garage and a shed;
- The area to the east of the existing building, along the railroad tracks, proposed to be used for seasonal outdoor dining;
- The large evergreen on the east side of the building, within the proposed patio area;
- The location of the second-floor apartment, with its two, exterior wooden stairways;
- The interior of the first floor, including spaces for the proposed store, kitchen, bathrooms and café;
- The locations of existing and proposed doors and windows.

**Public Hearing:** March 10, 2005.

The public hearing was held in the Town Room, Town Hall. Peter Sylvan, the applicant, presented the petition. He made the following points:

- He has submitted a preliminary property-line survey, as requested by the previous Special Permit.
- He is seeking to reopen the store and add a café.
- He has children in the Leverett Elementary School and wants a community-based place where families can go.

Tom Simpson noted that there is already a Special Permit (ZBA FY2004-00043) in place for the use, to re-establish the store and establish a café and to sell wine and beer in the store. He further noted that the applicant was appearing before the Board at this time to submit for approval a revised Management Plan, revised floor plans and a final revised Site Plan with information on signage and lighting, in accordance with the conditions of that previous Special Permit.

Mr. Sylvan stated that the proposed Management Plan is essentially the same as that submitted for ZBA FY 2004-00043. Mr. Simpson stated that a revised Management Plan needed to contain information regarding alcohol sales, personnel training procedures for the sale of alcohol, including checking identification and protecting against sales of alcohol to minors.

There was discussion about a possible state-imposed requirement to physically separate the area selling beer and wine from the café. The Board then asked the Planning Department staff to check with the appropriate authorities about the possible requirement for a physical separation.

Bonnie Weeks, Building Commissioner, noted that no beer or wine was to be consumed on site. The request was for a permit to sell beer and wine for off-premises consumption only. She also noted that the application requested permission for food to be consumed outside.

The Board again stated that alcohol was not to be consumed on the property, even at the outdoor dining area.

The Board requested that the applicant revise the Management Plan to be more explicit about training of salespeople regarding the sale of alcohol.

Barbara Ford inquired about the placement of the proposed windows on the west side of the building. Christine Brestrup, Land Use Planner, noted that the new plans submitted with this application were similar to the plans submitted for Special Permit ZBA FY2004-00043, except for the addition of the door going out to the deck, the number of windows proposed and the arrangement of the tables.

Barbara Ford inquired about the kitchen and whether it will be closed off from the rest of the interior. Mr. Sylvan stated that the exact configuration of the kitchen and whether it will be completely separate from the rest of the interior has not yet been determined.

Susan Pynchon inquired about whether there would be a hallway to the bathroom. Mr. Sylvan stated that there would be a hallway to the bathroom.

Ms. Weeks noted that unisex bathrooms are only allowed if the size of the establishment doesn't allow two single-sex bathrooms. She also noted that both bathrooms would need to be universally accessible.

Mr. Simpson inquired about the architectural plans and whether a partition is required between the café and the store if alcohol is sold in the store but not in the café. Christine Brestrup offered to research this issue.

Ms. Weeks noted that all doors need to be accessible and should be 36" wide.

Mr. Simpson stated that the floor plan and site plan submitted should represent what is to be built, since the Building Commissioner will use these plans, when approved, to determine what would be allowed in the building permit.

The Board discussed the revised site plan and noted that there is an easement over the driveway on the west side of the building, allowing the owners of the Cushman store property and the neighbors to the west to use the driveway. This easement is shown on the survey plan. The Board noted that the neighbors to the west often park along their side of the driveway. They further noted that the Fire Department needs an 18 foot wide clear path for access to the back of the lot. The plans, as submitted, show that there will be an 18 foot wide path for access for emergency vehicles to the back of the lot, unobstructed by the neighbors parked cars.

Mr. Sylvan stated that he is proposing to use long timbers fixed in place with rebars to designate the parking spaces at the rear of the site.

Tom Simpson inquired about grading and drainage, as mentioned in the conditions for the previous permit. Mr. Sylvan stated that storm water puddles where there are potholes. Once the driveway is repaved there will be no potholes and the drainage will follow its previous natural pattern of running off the site. He noted that the driveway and parking areas are essentially flat.

Mr. Simpson noted that the Board could add a condition to the permit that the driveway and parking area be graded flat and level.

The Board agreed that the applicant should not be asked to stripe the parking spaces within the Town Right of Way.

Tom Simpson asked about lighting along the driveway. The applicant responded that there was a town street light in Pine Street which lights up the driveway and other site lights would not be necessary.

Susan Pynchon asked if the back door would be open all the time that the store and café are open. The applicant responded that the back door would be open when the business is open.

Ms. Weeks noted that there is a requirement for lights at the doorways to the apartment and at all entrances and exits.

Mr. Sylvan noted that there will be "No Parking" signs mounted on the west side of the building to prevent customers from parking in the driveway.

There was further discussion about exterior lighting. The Board concurred that a lumen plan, as required by the previous Special Permit, was not necessary but that all existing and proposed exterior lights should be shown on the Site Plan.

The Board discussed the need for plantings on the site and requested that the revised Site Plan show existing and proposed landscape plantings. Mr. Simpson stated that the Board should require screening along the south property line, in the form of a solid fence, at least three feet high, or a dense evergreen hedge, to protect neighbors from headlights.

The Board discussed the deck and patio area and concurred that the deck on the east side of the building could be closer to the east property line than the existing building is since the building setback is already non-conforming. This would be an extension of a non-conforming structure under Section 9.22.

Mr. Sylvan noted that the fencing is proposed all around the patio and deck area, to prevent children from running onto the railroad tracks or into the street. A gate is proposed in the fence to allow access to the front of the building. The evergreen tree in this area will be trimmed.

Mr. Simpson noted that the fence needs to be high enough to prevent a child from climbing over it. Ms. Weeks stated that the fence should be constructed so that it cannot be climbed over or crawled under, that the rails must be no more than 4 inches apart and that it cannot create a "ladder-like" effect.

Ms. Weeks also noted that the plan needs to show ramps at all doors to provide accessibility, or else the petitioner needs to obtain a variance from the state.

Ms. Weeks stated that there is a threshold dollar amount over which one is required to make the entire building accessibility. The dollar amount of the threshold for universal (handicapped) access requirements includes the cost for the roof, repairs to the building, the patio, the deck and anything else that requires a building permit. Construction totaling less than \$100,000 or 33% of the total assessed value of the building is exempt, unless the item is being changed or newly built. Mr. Sylvan responded that he may not be able to build the deck or the patio because of the costs associated with providing universal access.

The Board discussed signs. There will be a need for a sign to direct people to the rear parking lot. The main business sign would be allowed to be larger than that allowed in the Bylaw for residential districts because the project as a whole is being approved under a Special Permit.

Mr. Simpson asked if there were any objections to the size and location of the signs as proposed. There were no objections.

Mr. Sylvan presented some historic photographs of the building, showing some signs that had been there in the past. He stated that the proposed signs will maintain the historic look of the past signs.

The Board made the following requests of the applicant:

- To remove the smaller signs in the windows of the Cushman store.
- To submit final information on the dimensions, colors and locations of the all of the proposed signs.
- To show a partition between the store and the café if such a partition is required by law.
- To accurately depict the proposed bathrooms, in terms of number, size and accessibility
- To show the parking spaces delineated with timbers, wheelstops or striping.
- To show existing trees and proposed screening for the rear property line.
- To resolve the issue of the outdoor dining and add ramps and fences as required bylaw.
- To size the doors for universal access, as required by law.
- To add a sign at the universally-accessible parking space to designate the space as accessible.
- To add a sign directing customers to parking in the rear of the property.

Barbara Ford MOVED to continue the evidentiary portion of the public hearing to April 14, 2005, at 7:00 p.m. Tom Simpson SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

**Continued Public Hearing** April 14, 2005

At the continued public hearing Mr. Sylvan presented the petition, the revised Site Plan, the revised Floor Plans and the revised Management Plan. He made the following points about the revised Site Plan. The revised plan shows:

- Lights at the two entrances to the upstairs apartment
- Locations of signs, including a "No Parking" sign, a "Parking in Rear" sign, a hanging sign board on the sign post at the front of the building, a sign over the main entrance and a "Handicapped Parking" sign at the rear.
- Screening along the south property line in the form of an evergreen hedge. (A fence in the neighbor's yard means that the hedge does not need to extend the full length of the property line.)
- The proposed patio with a universally-accessible ramp connecting the patio with the new door on the east side of the building, and the proposed deck has been deleted.

The revised Management Plan included a reference to staff training regarding alcohol sales.

Mr. Sylvan explained that the restoration cost is below the threshold that would require him to make every entrance universally accessible. Although the plans show that the rear door and the patio door will be accessible, the front door will not be accessible.

The threshold for complying with the accessibility regulations is \$100,000 or 30% of the assessed value of the building. The value of the building is \$145,000 according to the latest assessor's records. Thirty percent of that is \$43,500. The improvements requiring building permits amount to less than \$43,500. Other cosmetic work, for painting and cleaning, which is not included in the threshold amount, is approximately \$28,000.

Mr. Sylvan noted that the proposed ramp on the east side of the building will only need to rise about 20 inches to arrive at the door sill level. Therefore it will be about 20 feet long at a 1/12 slope (one inch of rise for every one foot of length). He also noted that there will be a fence around the patio.

Mr. Simpson inquired about the details of the fence. Mr. Sylvan described the proposed fence as being 30 inches high, about table height, so patrons can look out over it towards the railroad tracks. It is proposed to be a picket fence.

Mr. Simpson noted that the Board's concern about the fence is primarily related to the safety of toddlers and young children and that they would be unlikely to be able to climb a 30 inch high picket fence, and that this height would be acceptable.

Mr. Sylvan made the following statements:

- The bathrooms would remain as they are, with one being accessible.
- The rear door will be accessible but the front will not be.
- No partition is needed to separate the store from the café, since alcohol will not be served in the café.
- The new business will comply with ABCC regulations regarding sale of alcohol, specifically providing safeguards against underage purchase of alcohol.
- Proper forms of identification will be required for the purchase of alcohol.

Mr. Sylvan showed a color rendition of the main sign to be located over the front door. The sign will be 16 feet x 4 feet. The design was done by a local Amherst artist. The final design for the hanging sign has not been prepared yet.

Mr. Simpson stated that the Board would need to see graphics for the hanging sign and that the standard state-approved designs for the handicapped parking and other parking signs would be acceptable.

The Board discussed the trash receptacle at the patio area, including whether it was large enough and how often it would be emptied. Mr. Sylvan stated that the patio trash receptacle would be of a standard size, similar to those in downtown Amherst, and that it would have a flap over it, so that it would be contained and protected from insects and that it would be emptied every day. The Board noted that the main trash receptacle for the entire site would be a dumpster.

Ms. Weeks noted that the trash dumpster cannot be stored under the egress stair from the upstairs apartment.

The Board inquired about recycling bins. Mr. Sylvan stated that recycling bins would be kept next to the dumpster.

The Board and Mr. Sylvan agreed that the dumpster would be moved to be near the handicapped parking space, away from the egress stair. The Board also asked Mr. Sylvan to locate some recycling bins near the trash receptacle on the patio.

There was no public comment.

Susan Pynchon MOVED to close the evidentiary portion of the public hearing. Barbara Ford SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.



### **Public Meeting**

At the Public Meeting, the Board discussed the Management Plan, the Floor Plans and the Site Plan. Ms. Weeks noted that there may need to be some modifications made to the interior, but that these would probably not affect the Special Permit.

The Board recognized Mr. Sylvan, who noted that the proposed fence around the patio will extend as far as the proposed mailbox, and will have no gate. The fence will open towards the parking area at the front of the building.

### **Findings:**

Under Zoning Bylaw Section 9.22 the Board found that:

- The proposed use as a small store and café is not substantially different in character or in its effect on the neighborhood or on property in the vicinity and is not more detrimental to the neighborhood than the existing non-conforming use.

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district, because the primary use as a market has been in place in this location for many years without difficulties. The expanded use as a café will be in a building located at a crossroads of two heavily-traveled streets, with a railroad track on one side and a neighborhood common across the street. Even though it is in a residential zone it is in a busy location that has historically had a retail use. The hours of operation will be in keeping with the neighborhood location. The market and café will be operated in accordance with an approved management plan.

10.382, 10.383 and 10.385 – The proposal would not constitute a nuisance, a substantial inconvenience or a hazard, and the proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the hours of operation are limited by the management plan, the site will not be substantially changed from its historic condition, the applicants will submit a revised final site plan showing traffic patterns and emergency access, and a fence will be installed to protect individuals on the patio from dangers in the road or on the railroad tracks.

10.384, 10.387 and 10.389 – Adequate and appropriate facilities will be provided, the proposal will provide convenient and safe vehicular access and movement, and the proposal will provide adequate methods of disposal of sewage because the building is connected to town sewer and water, the building has historically been used as a market and the facilities will be upgraded to accommodate the expanded use as a café.

The applicant has submitted for approval a revised, final site plan to show vehicular access and movement and floor plans to show interior renovations.

10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

**Zoning Board Decision**

Susan Pynchon MOVED to approve the application, with conditions. Barbara Ford SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Peter Sylvan, to operate a small grocery store and café with seasonal outdoor dining and an off-premises beer and wine license for the store, under Section 9.22 of the Zoning Bylaw, at 491 Pine Street, (Map 6A, Parcel 39, R-N Zone).

\_\_\_\_\_  
TOM SIMPSON

\_\_\_\_\_  
BARBARA FORD

\_\_\_\_\_  
SUSAN PYNCHON

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals, based on the plans entitled "Site Plan", dated April 12, 2005, and "First Floor Plan", dated April 12, 2005, and on the revised Management Plan received in the Planning Department on April 11, 2005, all of which were approved on April 14, 2005, hereby grants a Special Permit to Peter Sylvan, to operate a small grocery store and café with seasonal outdoor dining and an off-premises beer and wine license for the store, under Section 9.22 of the Zoning Bylaw, at 491 Pine Street, (Map 6A, Parcel 39, R-N Zone) with the following conditions:

1. The hours of operation shall be 6:00 a.m. to 10:00 p.m., seven days a week.
2. The inside seating capacity shall be 32.
3. The outside seating capacity shall not exceed 24 and shall be arranged according to Architectural Access Board regulations.
4. The maximum number of employees shall be 6.
5. There shall be 20 parking spaces, including the 7 existing spaces which are partially or fully on Town property and which have been historically used for parking for the store. The three parking spaces immediately in front of the building shall be delineated by the painting of stripes on the pavement.
6. The parking spaces on the south side of the property shall be screened from adjacent residential properties by an evergreen hedge, as shown on the approved Site Plan. The parking spaces on the south side shall be marked by timbers or wheelstops as shown on the approved Site Plan.
7. Beer and wine shall be available for purchase in the market for off-site consumption only. All employees shall receive state-mandated training for sale of alcohol.
8. A fire lane of 18 feet in width shall be maintained for access to the back of the property.
9. This permit includes the existing apartment on the second floor; all conditions listed in Special Permit ZBA FY87-47, with respect to the apartment, shall be maintained.

10. The patio area shall be inspected daily for litter clean-up and more often when seasonal outdoor dining is offered.
11. No disposable plates, cups or cutlery shall be used on the patio.
12. No music shall be permitted outdoors or on the patio.
13. The volume of music from inside the structure shall be controlled so that it cannot be heard beyond the property.
14. Seasonal outdoor furniture shall be stored inside the building or in another location from November 1 to April 1.
15. Exterior lighting shall be directed onto the property and shall illuminate the rear parking area. Exterior lighting shall not shine onto adjacent properties.
16. The site improvements shall be built in accordance with the Site Plan approved on April 14, 2005.
17. Interior improvements to the building shall be built generally in accordance with the First Floor Plan approved on April 14, 2005.
18. The property shall be managed in accordance with the Management Plan approved on April 14, 2005.
19. Signs for the building, store, and café and the parking area shall be installed in accordance with the Site Plan and sign drawing submitted and approved by the Board on April 14, 2005.
20. Information regarding the hanging sign, the "No Parking" signs and the "Parking in Rear" sign shall be submitted for review and approval by the Board at its public meeting scheduled for May 12, 2005. This information shall include materials, dimensions and colors. Locations of these signs shall be as shown on the Site Plan approved on April 14, 2005.
21. When there is a change in ownership the new owner shall submit a Management Plan to the Board for review at a business meeting. The Board shall then decide if the new owner will be required to apply for a new Special Permit.

---

TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

---

DATE